

REMARKS/ARGUMENTS

1. The Examiner rejected claims 1, 2, 4, 5, 7, 8, and 12 under 35 U.S.C. § 102(b) as being anticipated by Jacuzzi et al. (U.S. Patent No. 3,736,924). Claims 1, 2, 4-8, and 12-15 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Jacuzzi et al. ("Jacuzzi") in view of Satterfield (U.S. Patent No. 4,811,434) and Savage (U.S. Patent No. 4,672,692). Claim 9 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Jacuzzi in view of Carrier (U.S. Patent No. 4,249,522) and Jones (WIPO Publication No. 88/00037). Claims 10 and 11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Jacuzzi in view of Carrier and Jones, and further in view of Satterfield and Savage. Claims 6, 8, and 15 were rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which the invention pertains, or with which the invention is most nearly connected, to make and/or use the invention. The specification was objected to as failing to provide proper antecedent basis for the claimed subject matter. Lastly, the drawings were objected to under 37 C.F.R. § 1.83(a) for failing to show every feature of the invention specified in the claims. Reconsideration of this application is respectfully requested in view of the amendments and/or remarks provided herein.

Objections to the Drawings

2. The drawings were objected to under 37 C.F.R. § 1.83(a) for failing to show every feature of the invention specified in the claims. In particular, the Examiner states that the "air bubbler" recited in claim 6, the "plurality of water jets" recited in claim 9, and the "air jet" recited in claim 15 must be shown in the drawings or the features canceled from the claims. Applicant has herein amended claim 6 to recite "air bubbling orifi" instead of "air bubbler." Applicant's new selection of terminology is supported on page 3, line 15 and page 9, lines 11-14 of Applicant's originally filed specification. With such an amendment to claim 6, Applicant submits that the features identified by the Examiner are already depicted in the drawings and, therefore, respectfully disagrees with the Examiner's objection to the drawings.

With respect to claims 6 and 15, FIG. 5 and its associated text on pages 9 and 10 of Applicant's specification clearly disclose air orifices (orifi) and air jets. Such jets/orifices are denoted by reference numeral "270" in FIG. 5. Moreover, the text on page 9, lines 1-2 of

Applicant's specification clearly informs the reader that jets are preferably used in all embodiments of Applicant's invention to force pressurized water into the tub (i.e., out of the orifices).

With respect to claim 9, orifices for directing a flow of water across the back of the bather are clearly depicted in FIG. 2 as reference numeral "230." While jets are not depicted in FIG. 2, a water jet is clearly depicted in FIG. 5 as reference numeral "263." As noted above, the text on page 9, lines 1-2 of Applicant's specification clearly informs the reader that jets are preferably used in all embodiments of Applicant's invention to force pressurized water into the tub. Thus, Applicant's submit that the combination of the orifices (230) of FIG. 2 and the jet (263) of FIG. 5 is more than adequate to provide one of ordinary skill in the art an understanding as to the subject matter sought to be patented. *See* 35 U.S.C. § 113.

Therefore, as detailed above, Applicant's drawings already show the orifices and jets recited in Applicant's claims 6, 9, and 15. Accordingly, Applicant respectfully requests that the Examiner withdraw his objection to the drawings.

Objections to the Specification

3. The specification was objected to as failing to provide proper antecedent basis for the claimed subject matter. In particular, the Examiner states that there is not proper antecedent basis for the term "fluid" as set forth in claims 1 and 15, the term "air bubbler" as set forth in claim 6, the term "air jet" as set forth in claims 8 and 15, the subject matter set forth in claims 13 and 14, and the term "fluid jet" as set forth in claim 15. Applicant addresses each objection below.

With respect to the term "fluid" as set forth in claims 1 and 15, such term is used at lines 3 and 4 of the abstract and in original claims 1, 3, and 4. Nevertheless, Applicant has herein amended paragraph [0010] (page 3, line 17 through page 4, line 7) of Applicant's specification to recite the term "fluid" as originally contemplated by the use of such term in the abstract and original claims 1, 3, and 4.

With respect to the term "air bubbler" as set forth in claim 6, Applicant has amended claim 6 to replace such term with the term "air bubbling orifi." Applicant's new selection of terminology is supported on page 3, line 15 and page 9, lines 11-14 of Applicant's originally filed specification.

With respect to the term “air jet” as set forth in claims 8 and 15, such term is fully supported at least on page 2, line 21 (“air and/or water orifices and/or jets”); page 9, line 14 (“air jets”); and page 10, line 1 (“air and/or water jets”) of Applicant’s originally filed specification. As a result, Applicant disagrees with the Examiner’s objection to the use of such term in claims 8 and 15.

With respect to the subject matter of claims 13 and 14, which claims have been cancelled herein but which subject matter has been incorporated into independent claims 1, 7, and 15, Applicant disagrees with the Examiner’s objection. The concept that pressurized fluid and/or air be directed upward onto at least one of a hand, a finger and a forearm of the bather is clearly set forth at various locations of Applicant’s specification, including, without limitation, page 3, lines 15-19; page 6, lines 16-17; and page 7, lines 8-10.

With respect to the term “fluid jet” as set forth in claim 15, such term is not expressly used in the specification. However, such term is clearly supported at the locations of the specification noted above that support use of the term “fluid” and at various locations of the specification that support use of the term “water jet.” Nevertheless, Applicant has herein amended paragraph [0010] (page 3, line 17 through page 4, line 7) of the specification to recite the term “fluid jet” to overcome the Examiner’s objection.

Based on the foregoing amendments to the specification and reasons overcoming the Examiner’s various objections to the specification, Applicant respectfully requests that the Examiner withdraw his objection to the specification.

Rejection under 35 U.S.C. § 112, first paragraph

4. Claims 6, 8, and 15 were rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which the invention pertains, or with which the invention is most nearly connected, to make and/or use the invention. In particular, the Examiner asserts that the terms “air bubbler” as set forth in claim 6 and “air jet” as set forth in claims 8 and 15 are not properly enabled by the specification. As noted above, Applicant has herein amended claim 6 to recite the term “air bubbling orifi” instead of “air bubbler,” where “orifi” is simply a plural form of the term “orifice” and equivalent to the term “orifices.” With such amendment to claim 6, Applicant disagrees with the Examiner’s assertions.

Air bubbling orifices and a jets are fully supported by Applicant's FIG. 5 and associated text on pages 9 and 10 of Applicant's originally filed specification. The Examiner asserts that Applicant has not disclosed how air is fed to the orifice via the duct. Applicant disagrees and submits that appropriate disclosure is provided on page 9, lines 11-21. Accordingly, Applicant respectfully requests that the Examiner withdraw his rejection of claims 6, 8, and 15 under 35 U.S.C. § 112, first paragraph.

Rejection under 35 U.S.C. § 102(b)

5. Claims 1, 2, 4, 5, 7, 8, and 12 were rejected under 35 U.S.C. § 102(b) as being anticipated by Jacuzzi. Applicant maintains his position that the armrest orifice disclosed in Jacuzzi is not "sized and shaped to direct a flow of pressurized fluid and/or pressurized air onto at least one of a hand, a finger and a forearm of the bather" as recited in independent claims 1 and 7. Notwithstanding the foregoing, in order to move prosecution forward, Applicant has amended independent claims 1 and 7 to include the "upward" flow limitation of claims 13 and 14. As conceded by the Examiner, Jacuzzi fails to disclose or suggest such a limitation. Therefore, Applicant submits that claims 1 and 7, as amended, are not anticipated by Jacuzzi and respectfully requests that claims 1 and 7 be passed to allowance. Claims 2, 4, 5, 8, and 12 depend upon claims 1 and/or 7, respectively, which claims have been shown allowable above. Therefore, since claims 2, 4, 5, 8, and 12 each introduce additional subject matter that, when considered in the context of the recitations of their respective base claims, constitutes patentable subject matter, Applicant respectfully submits that claims 2, 4, 5, 8, and 12 are in proper condition for allowance.

Rejections under 35 U.S.C. § 103(a)

6. Claims 1, 2, 4-8, and 12-15 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Jacuzzi et al. ("Jacuzzi") in view of Satterfield and Savage. Applicant has herein canceled claims 13 and 14, and amended independent claims 1, 7, and 15 to include the "upward" flow limitation of claims 13 and 14. With respect to claims 13 and 14, the Examiner concedes that Satterfield only teaches the provision of air bubblers/jets in the bottom portions (i.e., seats) of the bath, rather than the armrests. The Examiner then tries to rely on Savage to disclose the use of air bubblers/jets "wherever therapeutic action is desired." Applicant

respectfully disagrees with the Examiner's overly broad reading of the disclosure of Savage as applied to the claims of the instant application.

As the Examiner admits, Satterfield simply describes a spa having air orifices in the seats of the spa. Satterfield completely fails to disclose or suggest that the orifices are, or may be, in the armrests "to direct a flow of water or air upward onto at least one of a hand, a finger and a forearm of the bather" as recited in claims 1 and 7 or "to direct a flow of air upward onto at least one of a hand, a finger and a forearm of the bather" as recited in claim 15.

Savage describes a bath with air jets in the floor of the bath only. Therefore, similar to Satterfield, Savage completely fails to disclose or suggest that the orifices are, or may be, in the armrests to direct a flow of water or air upward onto at least one of a hand, a finger and a forearm of the bather as recited in claims 1, 7, and 15.

Therefore, none of the prior art cited by the Examiner discloses or suggests the use of orifices or jets in the armrests of a tub or spa to direct a flow of air or water upward onto at least one of a hand, a finger and a forearm of the bather as required by Applicant's independent claims. The Examiner asserts that inclusion of orifices or jets in an armrest for directing a flow of water or air upward onto at least one of a hand, a finger and a forearm of a bather as recited in Applicant's claims would be obvious to one of ordinary skill in the art based on the public disclosure of spas that include orifices or jets in the floor or seats thereof for directing a flow of water upward onto the derriere, legs and/or back of a bather as taught by Satterfield and Savage. Applicant respectfully disagrees and submits that Applicant's claimed armrest jets and orifices are obvious, if at all, only in hindsight after reading Applicant's specification. As the Examiner is clearly aware, use of hindsight is improper to support a conclusion of obviousness. *See, e.g., McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339, 1351 (Fed. Cir. 2001); *Ruiz v. A.B. Chance Co.*, 234 F. 3d 654, 664 (Fed. Cir. 2000).

Therefore, since the Examiner has failed to cite a single prior art reference that discloses or suggests the use of orifices or jets in an armrest to direct a flow of water or air upward onto at least one of a hand, a finger and a forearm of a bather, Applicant submits that independent claims 1, 7, and 15 are not obvious in view of the prior art of record and respectfully requests that claims 1, 7, and 15 be passed to allowance.

Claims 2, 4-6, 8, and 12 depend upon claims 1 and/or 7, respectively, which claims have been shown allowable above. Therefore, since claims 2, 4-6, 8, and 12 each introduce additional


subject matter that, when considered in the context of the recitations of their respective base claims, constitutes patentable subject matter, Applicant respectfully submits that claims 2, 4-6, 8, and 12 are in proper condition for allowance.

7. Claim 9 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Jacuzzi in view of Carrier and Jones. Claim 9 depends upon claim 7, which claim has been shown allowable above. Therefore, since claim 9 introduces additional subject matter that, when considered in the context of the recitations of claim 7, constitutes patentable subject matter, Applicant respectfully submits that claim 9 is in proper condition for allowance.

8. Claims 10 and 11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Jacuzzi in view of Carrier and Jones, and further in view of Satterfield and Savage. Claims 10 and 11 depend upon claim 7, which claim has been shown allowable above. Therefore, since claims 10 and 11 introduce additional subject matter that, when considered in the context of the recitations of claim 7, constitutes patentable subject matter, Applicant respectfully submits that claims 10 and 11 are in proper condition for allowance.

9. The Examiner is invited to contact the undersigned by telephone, facsimile or email if the Examiner believes that such a communication would advance the prosecution of the instant application. Please charge any necessary fees associated herewith, including extension of time fees (if applicable and not paid by separate check), to the undersigned's Deposit Account No. 50-1111.

Respectfully submitted,

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